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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/929,270	08/13/2001	M. Allen Northrup	22660-0009 C1	9986

20350 7590 01/21/2005

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EXAMINER

MARSCHER, ARDIN H

ART UNIT PAPER NUMBER

1631

DATE MAILED: 01/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding..

**Advisory Action**

Applicati n No.

09/929,270

Applicant(s)

NORTHRUP ET AL.

Examiner

Ardin Marschel

Art Unit

1631

--The MAILING DATE of this communicati n appears on the cover she t with th correspondence address --

THE REPLY FILED 27 September 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 27 September 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☒ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☒ Applicant's reply has overcome the following rejection(s): 103(a) rejection of claims 54-57.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: of reasons of record as further discussed as attached.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 54-57, 62 and 63.

Claim(s) objected to: 26, 27, 52 and 53.

Claim(s) rejected: 13, 14, 20-25, 28, 29, 44 and 48-51.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

Continuation of 2. NOTE: The claim 28 limitation is NEW MATTER which would require further consideration and/or search.

### **DETAILED ACTION**

Further explanation of item # 5 on the enclosed Advisory action:

The prior art rejection of claims 13, 14, 20-25, 28, 29, 44, and 48-51 based on Nelson et al. (P/N 6,074,827) is maintained and reiterated from the previous office action, mailed 3/23/04. Applicants then argue that nucleic acid amplification is not cited in a reaction chamber of Nelson et al. In response the amplification reaction limitation in claim 13 does not appear to limit the structure of the reaction chamber in any way and thus a generic reaction chamber as in Nelson et al. reasonably still describes a chamber as instantly claimed. Applicants then argue that claim 28 is patentable directed to ligand binding sites connected to an isoelectric focusing channel. The amendment to claim 28 has not been entered and therefore this argument is directed to limitations which are not in the claim and thus non-persuasive. Applicants then argue that claims 44 and 48-53 are patentable over Nelson et al. due to Nelson et al. lacking a three way valve as argued. In response this argument is non-persuasive because the instant claims lack any such three way valve limitation and therefore applicants' argument is directed to a limitation that is not in the claims.

Claims 26, 27, 52, and 53 are objected to as set forth in the previous office action, mailed 3/23/04.

Claims 54-57, 62, and 63 are allowable.

Papers related to this application may be submitted to Technical Center 1600 by facsimile transmission. Papers should be faxed to Technical Center 1600 via the Central PTO Fax Center. The faxing of such papers must conform with the notices published in the Official Gazette, 1096 OG 30 (November 15, 1988), 1156 OG 61 (November 16, 1993), and 1157 OG 94 (December 28, 1993)(See 37 CFR § 1.6(d)). The Central PTO Fax Center number is (571) 273-8300.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Supervisory Patent Examiner Ardin Marschel, Ph.D.,

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whose telephone number is (571) 272-0718. The examiner can normally be reached on Monday-Friday from 8 A.M. to 4 P.M.

Any inquiry of a general nature or relating to the status of this application should be directed to Legal Instrument Examiner, Tina Plunkett, whose telephone number is (571) 272-0549.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

January 18, 2005

*Ardin H. Marschel* 1/18/05  
ARDIN H. MARSCHEL  
PRIMARY EXAMINER